Public Bank Bhd v Muhibbah Meridian Sdn Bhd

HIGH COURT (KUALA LUMPUR) — COMPANY WINDING-UP PETITION NO D6–28–64 OF 2000

REKHRAJ J

31 MAY 2000

Companies and Corporations *— Winding up — Stay of proceedings — Judgment of senior assistant registrar subject to appeal —Whether debt due and payable upon demand — Whether winding up proceedings should be stayed — Companies Act 1965 s 222*

The petitioners obtained a summary judgment against the respondents before the senior assistant registrar ('the SAR'). The respondents lodged an appeal against the decision to the judge in chambers. The respondents also made an application to the SAR for a stay of execution of the summary judgment but the application was dismissed with costs. The petitioners then proceeded to issue a statutory demand under s 218 of the Companies Act 1965 and followed up with a petition. The respondent then served a notice of intention to attend hearing of the petition. At the hearing of the petition, a stay of proceedings pending the disposal of the appeal was granted. The petitioners were dissatisfied, hence this appeal against the granting of stay order.

Held:

(1) Presentation of winding-up petitions is an independent proceeding taken out under the Companies Act 1965 where it is necessary to prove the existence of a debt due and payable upon demand. Where the debt is disputed, as in the present case, being a debt on a judgment of the SAR and subject to and awaiting appeal to the judge in chamber or to the superior court, it certainly cannot be said to be an undisputed debt, just because the SAR has granted judgment. Until the debt crystalizes upon the determination of the appeal in favour of the petitioner, neither of the creditors other than the judgment creditor has a right to present a petition, without first establishing the debt (see pp 33G, I–34A).

(2) Section 222 of the Companies Act 1965 grants the commercial court, a court of coordinate jurisdiction in the High Court, an unfettered and unlimited jurisdiction to grant a stay, and or to restrain a petitioner from presenting such a petition especially if the court is satisfied that the debt is still a contentious civil matter (see p 34C).

[Bahasa Malaysia summary

Pempetisyen-pempetisyen telah memperolehi penghakiman terus terhadap responden-responden di hadapan penolong kanan pendaftar ('PKP'). Responden-responden juga membuat rayuan menentang keputusan tersebut kepada hakim dalam kamar. Responden-responden membuat permohonan kepada PKP bagi penangguhan pelaksanaan penghakiman terus tersebut tetapi permohonan tersebut telah ditolak dengan kos. Pempetisyen-pempetisyen kemudiannya mengeluarkan perintah berkanun di bawah s 218 Akta Syarikat 1965 dan ini disusuli satu petisyen. Responden menyampaikan notis niat menghadiri perbicaraan petisyen tersebut. Semasa perbicaraan petisyen tersebut, penangguhan prosiding sementara menunggu penyelesaian rayuan telah diberikan. Pempetisyen-pempetisyen tidak berpuas hati, justeru itu rayuan ini dikemukakan untuk menentang pemberian perintah penangguhan.

Diputuskan:

(1) Perserahan petisyen-petisyen penggulungan ini merupakan prosiding secara bebas yang diambil di bawah Akta Syarikat 1965 di mana wajib dibuktikan kewujudan hutang yang perlu dibayar dan boleh dibayar atas perintah. Sekiranya hutang tersebut dipertikaikan, seperti dalam kes ini, kerana hutang itu berdasarkan penghakiman PKP dan tertakluk kepada dan menanti rayuan kepada hakim dalam kamar atau kepada mahkamah atasan, ia pasti tidak dapat dikatakan sebagai hutang yang tidak dipertikaikan, cuma kerana PKP tersebut telah memberikan penghakiman. Sehingga hutang tersebut dikristalisasi atas keputusan rayuan yang menyokong pempetisyen, tiada pemiutang melainkan pemiutang penghakiman berhak menyampaikan petisyen tanpa terlebih dahulu membuktikan hutang tersebut (lihat ms 33G, I–34A).

(2) Seksyen 222 Akta Syarikat 1965 memberikan mahkamah komersil, satu mahkamah berbidang kuasa setara di Mahkamah Tinggi, bidang kuasa tanpa batasan untuk memberi penangguhan, atau menahan seseorang pempetisyen daripada menyampaikan petisyen sebegitu terutamanya jika mahkamah berpuas hati bahawa hutang tersebut masih merupakan perkara sivil yang dipertikaikan (lihat ms 34C).]

Notes

For cases on stay of proceedings, see 3(1) *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1123–1134.

Cases referred to

Solid Kitchen Sdn Bhd v Regal Development Sdn Bhd [1998] 6 MLJ 437 (refd)

Legislation referred to

Companies Act 1965 ss 218, 222
Rules of the High Court 1980 O 45

MY Goh (*Iza Ng Yeoh & Kit*) for the petitioner.
S Sinnappan (*Vazeer Akhbar Majid & Co*) for the respondent.

Rekhraj J. : The petitioners obtained a summary judgment against the respondents on 4 February 1999 before the senior assistant registrar ('the SAR') of the High Court Kuala Lumpur in Civil Suit No D3–22–1323–1998 in the sum of RM19,977,353.62 being the amount worked up as at 31 March 1998, together with continuing running interest thereon.

The respondents immediately lodged an appeal against the decision of the senior assistant registrar, to the judge in chambers; and the appeal is fixed for hearing on 20 July 2000 (encl (57)).

The respondents had also made an application to the SAR for a stay of execution of the summary judgment; but this application was dismissed with costs on 15 October 1999. The petitioners then proceeded to issue a statutory demand under s 218 of the Companies Act 1965 on 26 November 1999, for RM25,686,460.46 and followed up with a petition on 24 January 2000.

The respondent through their solicitors then served on the petitioners on 22 March 2000, notice of intention to attend the hearing of the petition; and by an affidavit in opposition dated 18 April 2000, filed the opposition and counter affidavits in reply.

At the hearing of the petition and upon reading the written submissions of the petitioners, I granted a stay of proceedings pending the disposal of appeal fixed for 20 July 2000. The petitioners being dissatisfied now appeal against my decision in granting stay.

In a similar circumstance in the case of *Solid Kitchen Sdn Bhd v Regal Development Sdn Bhd* [1998] 6 MLJ 437, I held that presentation of winding up petitions were not a means of execution envisaged under O 45 of the Rules of the High Court 1980; but are independent proceedings taken out under the Companies Act 1965; where one of the ingredient was the establishment of a *'debt' due and payable, upon demand* under a threat of winding up; in that by proving that the debt is due and payable upon demand. But where the debt is disputed, as is in this case, being a debt on a judgment of the SAR; and presently subject to and awaiting an appeal to the judge in chamber or to the superior court, it certainly cannot be said to be an undisputed debt (judgment), just because the SAR has granted judgment.

It is not a final judgment, that has finally disposed off the rights of the parties. To be final, it must be said to be the last and conclusive judgment without any right; or subject of appeal. At most, such a judgment in the interim is either a contingent creditor, because his debt will only become due to him on an event upon the successful launching of the appeal, or a prospective creditor; in that the debt crystalizes upon the determination of

the appeal in favour of the petitioner; and until then neither of the creditors, other than the judgment creditor has a right to present a petition, without first establishing the debt.

In any event, s 222 of the Companies Act 1965 specifically provides:

> At any time after the presentation of a winding up petition, and before a winding up order has been made, *the company* or any creditor or contributory may where any action or proceedings (appeal) against the company is pending, apply to the court *to stay* or restrain further proceedings in the action or proceeding (in this case the petition) and the *court may stay* or restrain the proceedings accordingly on such terms as it thinks fit. (Emphasis added.)

This section grants the Commercial Court, a court of co-ordinate jurisdiction in the High Court, the unfettered discretion; and an unlimited jurisdiction to grant a stay, and or to restrain the petitioner from presenting such a petition, especially so, if the court was satisfied that the debt was still a contentious civil matter, subjudice and pende lite. After all the courts administer justice and the word 'justice' is not 'just-ice'; but a load of unfettered discretions available to the presiding judge to exercise the balance of convenience in a manner applicable to each and every circumstance; as may be necessary for the purpose of justice!

Order accordingly.

Reported by Anitha MI Raman